IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 17.11.2007

Joginder Singh **...Petitioner**

VERSUS

Arvinder Kaur **…Respondent**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Ms.Simran Chahal, Advocate for the petitioner
Mr.Jagmohan Singh Johal, Advocate for respondent

Permod Kohli, J. (Oral)

This Revision has been preferred against the order dated

5.4.2006 passed by the Additional Civil Judge (Sr.Division), Ludhiana whereby petitioner has been asked to pay interim maintenance to the respondent at the rate of Rs.1000/- per month during the pendency of the suit.

Admitted facts of the case are that the respondent is the daughter of the petitioner. She was married to one Ranjit Singh on 12.6.1997. She has two children, one daughter and one son. Husband of respondent died on 24.7.1999. Respondent filed the suit against the present petitioner claiming maintenance under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 from the estate of the present petitioner (defendant in the suit) at the rate of Rs.10,000/- per month. The claim of the respondent was that though she is a married daughter, but she has no source of income to support and maintain herself and the children. It is further alleged by the respondent that her in-laws are also not in a position to maintain her and her children. Respondent further claimed that defendant has two shops where he is running his business in the name and style of M/s Happy Readymade Garmet Store and M/s Amrik Readymade Garmet Store at Janakpuri, Ludhiana and is earing Rs.50,000/- per month. He has also rental income from the property no.1534, Janakpuri,

Ludhiana, besides income from interest. Respondent accordingly claimed Rs.10,000/- per month as the maintenance. She also asked for interim maintenance.

The claim of the petitioner was seriously contested by the present petitioner stating in the reply that the plaintiff owns Kothi Nos. 126 and 102 in Sector 44-A, Chandigarh. She is earning Rs.9000/- per month as rental income. She is also accommodating paying guest and has engaged a servant. It was further pleaded that her son Inderjit Singh is major and had started business of Readymade Garments at the expense of the defendant, but stopped business and is serving with TATA Mobiles. Plaintiff is also stated to have a mobile phone and scooter and is well settled. Petitioner (defendant) also denied that he is having any concern with the garment business, being run under the name and style of M/s Happy Readymade Garmet Store and M/s Amrik Readymade Garmet Store at Janakpuri, Ludhiana. He further stated that he is not in a position to maintain. He is handicapped person and is not running any self business. The defendant also alleged that the plaintiff had sold a show-room at Chandigarh for Rs.6.00 lacs and has sufficient income and money for maintaining herself and her children. Plaintiff placed

on record Xerox copy of an agreement dated 6.1.2004 alleged to have been executed between the parties where under defendant agreed to pay Rs.15,000/- per month towards maintenance to the plaintiff-respondent Ravinder Kaur. The trial court granted interim maintenance vide the impugned order observing that the plaintiff is a widow daughter and defendant being her real father is liable to maintain her. The trial court also relied upon the photocopy of the alleged agreement dated 6.1.2004. It has also been observed that the defendant is selling vegetables on Rehri and this fact itself shows that he is hale and hearty and is able to maintain his widow daughter.

Validity of impugned order has been challenged in the present petition primarily on the ground that a married daughter cannot claim maintenance from her father under law and the father has no legal obligation to maintain a married or even a widow daughter, particularly, when she has a major earning son. From the impugned order, it appears that the petition has been filed under Sections 18 and 20 of the Hindu Adoption and Maintenance Act. Section 18 of the Hindu Adoption and Maintenance Act, provides that a Hindu wife is entitled to be maintained by her husband during her life time. This Section has no application to the present case. It is Section 20 of the

Act which provides for maintenance of children and aged parents. It is relevant to refer to this Section which reads as under:-

> 20.Maintenance of children and aged parents:- (1) Subject to the provisions of this Section, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.
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> (2)A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
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> (3)The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.
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> Explanation- In this Section "parent" includes a childless stepmother."

Sub Section (1) of Section 20 of the Act imposes an obligation upon a Hindu to maintain his or her legitimate or illegaitimate

children as also aged or infirmed parents. Sub Section (2) of Section 20 of the Act provides that legitimate or illegaitimate child is entitled to claim maintenance from his or her father or mother so long as he/she is minor. Sub Section (3) of Section 20 imposes an obligation upon a person to maintain his or her aged or infirmed parents or an unmarried daughter. This obligation for the unmarried daughter is only if she is unable to maintain herself out of her own earnings or other property. No other provision of law has been brought to my notice which, inter alia, requires a father to maintain her married daughter or even a widow daughter. From the impugned order, it is evident that respondent-daughter who claimed maintenance from the petitioner is 43 years of age. She has a major son, namely, Inderjit Singh. Age of the respondent/plaintiff itself indicates that the petitioner herein must be an old person. Petitioner has indicated his age in the affidavit filed as 76 years. Respondent-daughter was married in the year 1977 that means more than 30 years ago. Even at the time of marriage, she must have been 18 years of age. Presently she should be 48 years of age or so, though her age in the petition is mentioned as 43 years. It is alleged by the petitioner that her son is major and had earlier started Garment business and is presently

serving with TATA Mobiles. She owns two houses- Nos.216 and 102 in Sector 44-A, Chandigarh. These facts have not been considered by the trial court. Be that as it may, basic question that arises is whether the father has any legal obligation to maintain her married or widow daughter and her children.

Section 20 of the Act noticed hereinabove does not impose any such obligation upon father. A father has a legal and statutory obligation to maintain his unmarried daughter, and that too, if she is unable to maintain herself out of her own earnings or other property. Under this Section, a married daughter has absolutely no right to claim maintenance from her father even if she is unable to maintain her. Under Hindu mythology, before marriage of a daughter, the obligation is that of the parents, may be legal, social or moral, but after her marriage this obligation is shifted to her husband and where the husband is not alive, the children, if able to maintain, or in-laws and the property of the husband. Under no circumstances, a father can be forced to maintain her married daughter irrspective of the fact whether he has financial resources. Willing father may, of his own desire or sweet will, and considering some kind of pious or moral obligation, decide to provide some financial help to the married

destitute widow, daughter, but no such obligation can be enforced or pressed through law. Section 20 of the Act does not envisage any legal obligation of a father to maintain her married daughter, particularly, who has a major son and property of her husband. The order impugned is without jurisdiction and any legal sanction. As far as the reference to alleged agreement sought to be executed between father and daughter is concerned, the legality and validity of such an agreement also needs to be considered. There is not even a whisper about the legality and sanctity of such an agreement. In any case, if the claim is based upon agreement, it has to be examined by the court during trial, but under no circumstances, the claim of maintenance is sustainable under Section 20 or any other provision of Hindu Adoption and Maintenance Act. Entire proceedings seem to be without jurisdiction. The impugned order is accordingly not sustainable in law and is hereby set aside. If the respondent has any right under the agreement and the agreement is otherwise enforceable under law, she may enforce the same independent of claim of maintenance in appropriate proceedings before the competent civil court and the concerned court may examine its validity and enforceability, but these proceedings under the Hindu Adoption and

Maintenance Act are liable to be quashed.

In view of the above, I allow this revision and quash the impugned order dated 5.4.2006 passed by the Addl. Civil Judge (SD), Ludhiana.

(PERMOD KOHLI)
JUDGE

17.11.2007
MFK

NOTE:Whether to be referred to the Reporter or not:YES